

**NASD REGULATION, INC.
AWARD**

In the Matter of the Arbitration Between

Name of Claimant

Stanley Katz

96-03972

Name of Respondents

H.J. Meyers & Co., Inc.

Mark J. Allen

Robert J. Setteducati

REPRESENTATION

For Claimant Stanley Katz ("Katz") appeared Dan Brecher, Esq., a sole practitioner with offices located in New York, New York.

For Respondents H.J. Meyers & Co., Inc. ("Meyers") and Robert J. Setteducati ("Setteducati") appeared James C. Cosby, Esq., of the law offices of Maloney Huennekens Parks Gecker & Parsons located in Richmond, Virginia.

For Respondent Mark J. Allen ("Allen") appeared John J. Phelan, Esq., a sole practitioner with offices located in New York, New York.

CASE INFORMATION

Katz's Statement of Claim was filed on August 30, 1996.

Katz's Submission Agreement was signed on November 5, 1996.

A Joint Statement of Answer was filed by Meyers and Setteducati on February 24, 1997.

Meyers' Submission Agreement was signed on January 16, 1997.

Setteducati's Submission Agreement was signed on January 17, 1997.

Allen's Statement of Answer was filed on February 28, 1997.

Allen's Submission Agreement was signed on February 25, 1997.

HEARING INFORMATION

Pre-Hearing Conferences:

February 10, 1998

One Session - Full Panel

March 5, 1998

One Session - Full Panel

Hearing Dates/Sessions:

June 29, 1998

Two Sessions

July 1, 1998

Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Katz alleged that Meyers, formerly Thomas James Associates, acted as Acculyte's Placement agent with respect to its \$2.25 million private placement offering. Katz further alleged that the details of the offering were conceived by Allen and Setteducati, and that the private placement offering was intended to finance a "bridge loan" so that Acculyte could continue operations until it was able to go public. Katz asserted that Respondents did not state Acculyte's true financial condition, business practices or proposed plans for further financing. Katz further asserted that the Private Placement Memorandum failed to reflect the decision of Acculyte's management to extend the private placement, the financial effect of that extension or the risks associated with that extension. Katz alleged that based on the representations of Respondents and the Private Placement Memorandum he invested in Acculyte. Katz alleged that all Respondents breached the Securities Exchange Act, breached their fiduciary duties, engaged in fraud, were negligent and made negligent misrepresentations, and that Meyers, additionally, violated provisions of RICO, committed breach of contract, and is liable under the doctrine of *respondeat superior*.

Meyers and Setteducati maintained that the Private Placement Memorandum was drafted by Acculyte and contained representations as to the company's present condition and future prospects. Meyers and Setteducati asserted that before participating in the Acculyte offering, Katz executed Subscription Documents, in which he represented that: he had reviewed and relied only on the Private Placement Memorandum drafted by Acculyte; he had adequate opportunity to review the books and records of the company with his attorney and/or accountant; and he had reasonable opportunity to ask questions of Acculyte. Meyers and Setteducati further asserted that Katz represented that he was an accredited investor as defined under Rule 501 of Regulation D of the Securities Act of 1933, and, therefore, was able to participate in the private placement. Meyers and Setteducati maintained that, on page (i) of the Private Placement Memorandum it states, in bold type,: "These securities involve a high degree of risk and their purchase should be considered only by persons who can afford to sustain a total loss of their investment. See 'Risk Factors'." Meyers and Setteducati asserted that by reading and relying on the Private Placement Memorandum Katz was aware of the risks involved. Meyers and Setteducati maintained that Katz was an experienced investor with substantial experience in speculative securities. Meyers and Setteducati further maintained that Katz spoke with officers of Acculyte. Meyers and Setteducati maintained that the Statement of Claim fails to make any allegations against Setteducati.

Allen denied that he violated any statute, regulation, rule or industry standard in any of the matters alleged in the Statement of Claim. Allen maintained that he was never head of investment banking, but rather worked in the investment banking department. Allen maintained

that he never made any representations or provided information to Katz. Allen further maintained that he was not a controlling person of Meyers, and had no duty to supervise or perform any particular duty. Allen maintained that he was not a fiduciary to Katz, and was not managing Katz's funds or securities. Allen further maintained that Katz has failed to make specific allegations against him.

RELIEF REQUESTED

Katz requested:

- (a) On the first, second, and third claims for relief against Meyers damages in an amount of not less than \$75,000.00 and reasonable attorneys' fees;
- (b) On the fourth claim for relief against all Respondents, damages in an amount of not less than \$25,000.00;
- (c) On the fifth claim for relief against Meyers damages in an amount totaling not less than \$25,000.00;
- (d) On the sixth and seventh claims for relief against all Respondents, damages in an amount totaling not less than \$25,000.00;
- (e) On the eighth and ninth claims for relief against all Respondents, damages in an amount totaling not less than \$25,000.00;
- (f) On the tenth and eleventh claims for relief against Meyers, damages in an amount totaling not less than \$25,000.00;
- (g) On the twelfth claim for relief against Meyers, damages in an amount not less than \$75,000.00; and
- (h) On all claims for relief, interest as authorized by law; the costs and disbursements incurred for the arbitration herein, and reasonable attorneys' fees; and such other and further relief as the panel deems appropriate.

Meyers and Senneducati requested that the Statement of Claim be dismissed in its entirety and that they be awarded their costs and fees.

Allen requested that the Statement of Claim be dismissed in its entirety and that he be awarded attorneys' fees and costs.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

Prior to the commencement of the hearing, Katz withdrew his claim under RICO.

Prior to the commencement of the hearing, Respondents moved to dismiss all claims as time-barred, and also moved to dismiss claims made under Section 10b of the Securities Exchange Act and Rule 10b-5. The motions were denied.

By letter dated June 24, 1998, Katz withdrew all claims, with prejudice, against Respondents

Mark Allen and Robert Setteducati.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Katz's claims are hereby dismissed in their entirety.
2. All other requests are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure, H.J. Meyers & Co., Inc. has paid to NASD Regulation, Inc. the \$200.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$120.00 non-refundable filing fee deposited by Katz and have assessed the following Forum Fees:

2 Pre-hearing conferences (full panel) x \$400.00	=	\$ 800.00
4 Hearing sessions x \$400.00	=	<u>\$1,600.00</u>
Total Forum Fees	=	\$2,400.00

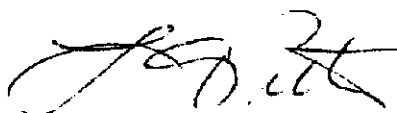
1. Katz be and hereby is liable for and shall pay the sum of \$1,200.00 representing one-half of the total forum fees assessed. Katz previously deposited \$400.00 with NASD Regulation, Inc., and, therefore, shall remit the \$800.00 remaining balance.
2. Meyers be and hereby is liable for and shall pay the sum of \$1,200.00 representing one-half of the total forum fees assessed.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Lawrence A. Pittore, Esq.	-	Public Chairperson
Alan Shaw, Esq.	-	Public Arbitrator
Thomas E. Siegler	-	Industry Arbitrator

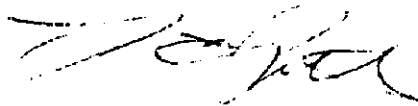
CONCURRING ARBITRATOR'S SIGNATURE



Lawrence A. Pittore, Esq.
Chairperson - Public Arbitrator

Date of decision: September 2, 1998

I, Lawrence A. Pittore, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Lawrence A. Pittore, Esq.

ARBITRATION PANEL

Lawrence A. Pittore, Esq.	-	Public Chairperson
Alan Shaw, Esq.	-	Public Arbitrator
Thomas E. Siegler	-	Industry Arbitrator

DISSENTING ARBITRATOR'S SIGNATURE

Alan Shaw
Alan Shaw, Esq.
Public Arbitrator

Date of decision: September 2, 1998

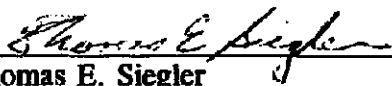
I, Alan Shaw, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Alan Shaw
Alan Shaw, Esq.

ARBITRATION PANEL

Lawrence A. Pittore, Esq.	-	Public Chairperson
Alan Shaw, Esq.	-	Public Arbitrator
Thomas E. Siegler	-	Industry Arbitrator


CONCURRING ARBITRATOR'S SIGNATURE



Thomas E. Siegler
Industry Arbitrator

Date of decision: September 2, 1998

I, **Thomas E. Siegler**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Thomas E. Siegler